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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.04.2022

Coram:

The Honourable Mr. Justice V. PARTHIBAN

W.P.No.3847 of 2017

and

W.M.P.No.3915 of 2017

V.Rukkumani

..Petitioner

Vs

1. The Deputy Commissioner of Labour,
Authority under the payment of wages Act, 1936,
Dr.Balasundaram Road, Behind RTO Office,
Coimbatore Central, Coimbatore - 641 018

2. The Management of K-879 Udumalaipettai
Town Co-operative Society Ltd.,
No.59, Pasupathy Street,
Udumalaipettai - 642 126,
Tiruppur District.

..Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records relating to the order dated 18.11.2016 passed by the 1st respondent Authority, Coimbatore in I.A.No.07 of 2016 in P.W.No.65 of 2013 and to quash the same as illegal, arbitrary and labour jurisprudence and for a direction to the respondents to proceed further with Management side evidence by giving opportunity to cross examine the witness.

For Petitioner .. Mr.Balan Haridas

For Respondents.. Mr.L.S.M.Hasan Fizal,
Additional Government Pleader
for R1
Mr.L.P.Shanmugasundaram for R2.

O R D E R

The petitioner was appointed as saleswoman on 01.07.1987 in the 2nd respondent Society. After serving in the Society for more than 25 years, she retired from service on attaining the age of superannuation on 31.05.2013. The 2nd respondent



Management of Society is under the administrative control of the Registrar of Co-operative Societies and they are fully governed by the orders and circulars issued by the Cooperative Department by the Government of Tamilnadu from time to time. The wages of the employees are fixed by the Government.

2. According to the petitioner, on 08.09.1990, she was posted as Clerk and was discharging her duties as such. Earlier, she was working as cashier. According to the petitioner, the posts of Cashier, Clerk and Secretary remained vacant for a long period of time and the petitioner was made to work in all the three posts, as no regular appointments were made to the said posts. Since proper wages were not fixed commensurate with the posts held by the petitioner, she approached the authority concerned by filing an appeal under Section 153 of the Tamil Nadu Cooperative Societies Act, 1983. The authority constituted under the said Section, passed an order on 22.04.2013, directing the 2nd respondent Society to fix the basic wage of the petitioner from 01.04.2000 in terms of G.O.Ms.No.238, Cooperative Department, Government of Tamil Nadu and also grant monthly increments in terms of the said G.O. However, the 2nd respondent Society did not implement the order of the authority. In the mean while, the petitioner attained the age of superannuation and retired from service on 31.05.2013. According to the petitioner, the 2nd respondent Society was liable to pay Rs.4,56,054/-, the outstanding wages from November, 2007, until the date of superannuation.

3. In the above circumstances, the petitioner approached the authority constituted under the Payment of Wages Act, by filing an application in P.W.No.65 of 2013. A counter affidavit was filed on behalf of the 2nd respondent Management repudiating the claim of the petitioner. On behalf of the petitioner, 9 documents were marked consisting of various Government Orders and Circulars in support of the claim of the petitioner. The petitioner was also examined and was posted for cross examination on two occasions. On 26.05.2014, the learned counsel for the 2nd respondent Management reported no instructions. Subsequently, on several dates, there was no representation on behalf of the Management. Therefore, the authority passed an exparte order on 21.07.2014 directing the 2nd respondent Society to pay Rs.4,56,054/- within a period of 30 days.

4. At this, the 2nd respondent Society filed I.A.No.02 of 2015 seeking to condone the delay of 125 days in filing an application to set aside the exparte order dated 21.07.2014



passed by the 1st respondent authority. On the basis of no objection endorsed on behalf of the petitioner, the delay was condoned and the exparte order dated 21.07.2014 was set aside by directing payment of cost of Rs.1,000/-. Thereafter, the matter was posted for respondents' side evidence repeatedly.

5. Despite several opportunities, there was no representation on behalf of the 2nd respondent Society and therefore, the 1st respondent authority closed the respondents' side evidence on 30.03.2015 and posted for arguments on 08.04.2015. On the said date, an application was filed on behalf of the 2nd respondent management seeking to reopen their evidence and the same was allowed by the authorities on payment of cost of Rs.200/-. On 15.04.2015, one P.Velurugan, Secretary of the 2nd respondent Management, filed a proof affidavit and 7 documents were filed in support of the same. Thereafter, once again, there was no representation on behalf of the management and the witness did not turn up for cross examination at all. Several opportunities were provided but there was no response from the management. The 1st respondent authority was constrained to close the evidence of the respondent management on 26.06.2015 and posted the matter for arguments on 10.07.2015.

6. The 2nd respondent Management once again, filed an application to reopen their evidence on 24.07.2015. On 24.08.2016 once again, an endorsement was made stating no objection for allowing the application. Thereafter, the matter was repeatedly posted for evidence of the management but there was no response. On 20.11.2015, for the third time, the evidence of the respondent was ordered to be closed and the matter was posted for arguments.

7. On 26.04.2016, the 2nd respondent Society with a view to frustrate the attempts by the petitioner in obtaining the relief in the proceedings, filed Application in I.A.No.06 of 2016 seeking to eschew the proof affidavit filed on 15.04.2015 and sought permission of the 1st respondent to let in fresh evidence and to mark documents. The said application was allowed on 24.08.2016. Further, on 07.09.2016, the 2nd respondent Management, instead of filing proof affidavit and documents, filed another application in I.A.No.7 of 2016 seeking to reopen the applicant's evidence. When the dispute was in fact posted for evidence on their side, the 1st respondent authority, very strangely and mechanically, allowed I.A.No.07 of 2016 on 18.11.2016, seeking to reopen the petitioner's side evidence on the ground that the management should be provided with an opportunity to cross examine the petitioner. As against the



order of the 1st respondent authority, allowing I.A.No.07 of 2016, dated 18.11.2016, the present writ petition has been filed.

8. The writ petition was heard on a couple of occasions. On behalf of the petitioner Mr. Balan Haridass appeared. On behalf of the 1st respondent Mr. L.S.M. Hasan Fikal, the learned Additional Government Pleader appeared and Mr. L.P. Shanmugahasundaram, the learned Standing counsel appeared on behalf of the 2nd respondent Society.

9. When the matter was taken up for hearing today, on behalf of the 2nd respondent Society, a calculation sheet has been filed stating that the petitioner is actually entitled to be paid only Rs.3,26,954/- and not the amount as she claimed before the 1st respondent authority. According to the learned counsel for the 2nd respondent Society, the payment as admitted by the Society, could be ordered to be paid.

10. At this, the learned counsel for the petitioner would submit that the writ petition may be disposed of by directing the 1st respondent authority to go ahead with the proceedings and decide the case on merits in respect of the remaining claim of the petitioner after adjustment and giving credit to the amount admitted to be paid to the petitioner. The learned counsel would submit that time may be fixed for payment of the admitted amount of Rs.3,26,954/- to the petitioner and leave the issue of the claim of the petitioner before the authority, open for consideration by the 1st respondent authority in the pending proceedings.

11. In consideration of the above development, the Writ Petition is disposed of with the directions as under.

i) The 2nd respondent is directed to make payment of Rs.3,26,954/- (Rupees Three Lakhs Twenty Six Thousand Nine Hundred and Fifty Four only) to the petitioner as admitted by them in their calculation sheet filed before this Court within a period of two weeks from the date of receipt of a copy of this order.

ii) The 1st respondent authority is directed to proceed with the proceedings in P.W.No.65/2013 in respect of the remaining part of the claim of the petitioner herein and dispose of the appeal as expeditiously as possible, not later than six months from the date of receipt of a copy of this order.

iii) It is needless to mention that the payment of Rs.3,26,954/- is without prejudice to the rights of the petitioner in the pending proceedings before the 1st respondent authority.



No costs. Consequently, connected miscellaneous petition is closed.

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s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

vsi

To

1. The Deputy Commissioner of Labour,
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Dr.Balasundaram Road, Behind RTO Office,
Coimbatore Central, Coimbatore - 641 018
2. The Management of K-879 Udumalaipettai
Town Co-operative Society Ltd.,
No.59, Pasupathy Street,
Udumalaipettai - 642 126,
Tiruppur District.

+1 CC to M/s. Balanharidas, Advocate sr 25241

+1 CC to The Government Pleader sr 25287

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PMK(CO)
SP(26/04/2022)

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