



W.P.(MD).No.4327 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.04.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.4327 of 2012

1.P.Petchimuthu

2.P.Asai Thambi

3.R.Raja

... Petitioners

Vs.

1.The Presiding Officer,
Labour Court,
Tirunelveli.

2.The Management,
Tirunelveli District Co-operative
Milk Producers Union Limited,
Reddiarpatti Road,
Tirunelveli.

3.The Deputy Registrar (Milk),
Collectorate Office Compound,
Kokkirakulam,
Tirunelveli.

4.The District Collector/Special Officer,
Tirunelveli District Co-operative,
Milk Producers Union Limited,
Tirunelveli.



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5.The Commissioner,
Milk Production and Diary Development Department,
Aavin Illam,
Madavaram,
Chennai – 51.

6.The Secretary to Government,
Animal Husbandry and Fish & Diary
Development Department,
Chennai – 9.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the common impugned order of the first respondent passed in C.P.Nos.59, 60 and 61/2010 dated 31.01.2012 and quash the same and further direct the second respondent to re-fix the scale of pay of the petitioners at Rs.2550-55-2660-60-3200 from 18.09.2000 as per G.O.Ms.No.162 Finance (Pay Cell) Department dated 13.04.1998 and pay all arrears and monetary benefits within the time frame fixed by this Court.

For Petitioners : Mr.H.Arumugam

For R-1 : Labour Court

For R-2 : Mr.Jerin Mathew
for M.E.Ilango

For R-3 to R-6 : Mrs.D.Farjana Ghoushia,
Special Government Pleader.



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ORDER

This Writ Petition is filed by the individuals to quash C.P.Nos.59, 60 and 61/2010 dated 31.01.2012 and direct the second respondent to refix the scale of pay of the petitioners at Rs.2550-55-2660-60-3200 from 18.09.2000 as per G.O(Ms)No.162 Finance (Pay Cell) Department, dated 13.04.1998 and pay all arrears and monetary benefits.

2. The brief facts of the case are that the petitioners were originally engaged as Casual Labourers and appointed as Mazdoor in the second respondent Management on daily wages in the year 1993. After completion of more than two years, the second respondent did not confirm their service. Hence, they preferred petitions before the Deputy Chief Inspector of Factories and the same was ordered on 04.03.1996 by conferring permanent status to the petitioners as per Section 3 of the Industrial Establishments (Conferment of Permanent Status) Act, 1983 from 24.03.1993. However, the second respondent did not implement the same. Hence, the petitioners filed the Claim Petitions before the Labour Court and the same were allowed by passing an award dated 20.09.2001 directing the second respondent to pay the entire back wages and the second respondent did not pay the same. In the meanwhile, the sixth



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respondent passed Government Order in G.O.Ms.No.148 dated 18.09.2000 to regularize the service of the petitioners and absorb them as permanent employees from 18.09.2000.

3. The contention of the petitioners is that since they were already conferred with permanent status from 24.03.1993 and the second respondent failed to implement the same, the petitioners preferred W.P.(MD).Nos.42780 to 42784 of 2002 before the Principal Bench of this Court seeking wages from 24.03.1993 as per the order of the Deputy Chief Inspector of Factories. The Management also filed Writ Petitions against the award of the Labour Court in W.P.Nos.6826, 6831, 6832, 6834 and 7000 of 2002 and this Court directed the Management to pay 50% of back wages for granting stay. Subsequently, the said Writ Petitions were disposed of, by passing an order to the effect that the petitioners were not entitled to balance 50% of the award amount, but held that the petitioners were entitled to be regularized with effect from 18.09.2000 as per G.O.Ms.No.148 and they are entitled to continuity of service from the date of proceedings of the Deputy Chief Inspector of Factories, dated 04.03.1996 for the purpose of calculating the terminal benefits. Aggrieved over the same, the Management preferred W.A.Nos.2910, 2129, 2913 and 2914 of 2004 and the Division Bench of this Court partly allowed the Writ Appeals on 09.06.2009 by setting aside the order in respect of calculating the terminal benefits from



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04.03.1996 and directed that the petitioners are entitled to the same from the date of regularization, i.e., from 18.09.2000. Based on the order passed in the Writ Appeals, the Management passed an order dated 27.08.2009 regularizing the petitioners' service as Factory Assistants with the pay of Rs.18 and other allowances which is payable to the casual labours from 18.09.2000 and in the very same order, promoted the petitioners as Senior Factory Assistants with the basic pay of Rs.2550-55-2660-60-3200 with effect from 01.04.2005.

4. The contention of the petitioners is that even though the second respondent appointed the petitioners as Factory Assistants with effect from 18.09.2000, but did not paid the wages as stated above applicable to the post of Factory Assistants and on the other hand, paid the wages as applicable to the casual labours till 01.04.2005 and only from 01.04.2005, allowed the basic scale of pay and also paid the arrears as per the respondent order from 01.04.2005. The contention of the petitioners is that the order passed by the High Court in the Writ Petitions are very clear that the petitioners are entitled to get all arrears from the date of regularization and the same shall be paid by the second respondent within 90 days. But contrary to the order of the second respondent, once again, the respondent fixed the pay scale as Rs.18 as applicable to the Daily Wage Labour. Aggrieved over the same, the petitioners preferred Writ Petition in W.P.(MD).No.1229 of 2010 for Mandamus directing



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to implement G.O.Ms.No.162 dated 13.04.1998. In the meantime, the petitioners were advised to file Claim Petition before the Labour Court.

Thereafter, the petitioners preferred Claim Petitions in C.P.Nos.59 to 61 of 2010 respectively and thereafter had withdrawn the Writ Petition with liberty to work out the remedy before the Labour Court. The second respondent took up a plea before the Labour Court that the petition is not maintainable, since there was no adjudication of right to claim the arrears and since the petitioners have already claimed the same relief in the Writ Petition. The first respondent accepted the plea of the second respondent and dismissed the Claim Petitions by common order, dated 31.01.2012 stating that the petitions are not maintainable since there was no adjudication at all. Aggrieved thereby, the present Writ Petition has been filed.

5. The contention of the respondents is that earlier, there was a conferment order. Subsequently, the petitioners were regularized through Government Order. Therefore, the conferment order merges to the regularization and the petitioners are entitled to any benefits based on the Government Order. The Government Order states that the Commissioner has recommended to regularize 91 daily wage employees and based on the recommendation, the said G.O.Ms.No.148 is passed directing to regularize the 91 daily wage employees by creating “supernumerary posts” in the cadre of



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Junior Mazdoor and thereby, 75 posts were created and based on the creation of the posts, the petitioners and other 75 employees were regularized. Any regularization would come into effect from the date of issuance of Government Order. In the said Government Order, the mode of payment has not been fixed. Consequent to the said Government Order, the Commissioner has passed an order in Na.Ka.No.30662/95/No.3, dated 04.10.2000. In the said order, based on the said Government Order, the supernumerary posts were created and the said employees were regularized from the date of issuance of Government Order and has directed the relevant Directors to issue individual orders. After the regularization, the employees regularized under the supernumerary post were considered by the District Co-operative Milk Producers Association and proceedings were passed in Na.Ka.No.2257 establishment I/2009, dated 27.08.2009, wherein, it has been stated that the employees shall be regularized with Rs.18 as daily wages along with other benefits from 18.09.2000. Thereafter, from 01.04.2000, they are considered as Senior Factory Assistants with time scale of pay. Therefore, the contention of the respondents is that they are eligible for the time scale of pay from the date of passing of this circular, dated 27.08.2009 wherein it has been fixed the date as 01.04.2005. Since the respondents have issued supernumerary post and has fixed the salary as a daily wages from 2000 to 2005 and from 2005 onwards, time scale of pay was fixed.

Therefore, the salary payable to the petitioners cannot be judicially reviewed by



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any Forum. If the petitioners are aggrieved by these orders, then the petitioners ought to approach the Labour Court and the findings ought to be rendered about the eligibility of the salary to the petitioners. After such eligibility, only the Claim Petitions can be filed under Section 33 C(2) of Industrial Disputes Act. Since there is a dispute in the amount eligible to the petitioners, the petitioners cannot claim directly under the Claim Petitions. Hence, the respondents prayed to dismiss the Writ Petition.

6. Heard Mr.H.Arumugam, learned counsel for the petitioners, Mr.Jerin Mathew, learned counsel for the second respondent and Mrs.D.Farjana Ghoushia, learned Special Government Pleader for respondents 3 to 6.

7. Section 33-C(2) of Industrial Disputes Act reads as under:

33-C.....

(2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government; [within a period not exceeding three months:] [Provided



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that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit.]

8. In the present case, earlier the petitioners were granted conferment. Subsequently, the Government has passed regularization order, which was challenged before appropriate forum and the dispute has ended vide the decision rendered by the Division Bench of this Court in the Writ Appeal. Now, the question would be, what is the payment that is applicable to the petitioners. The respondents submitted that the petitioners have been absorbed in the supernumerary posts, they will be entitled only on consolidated pay or daily wages. The respondents have considered their claim and granted regularization, but fixed Rs.18 as daily wages. Any regularization is applicable as per the terms of regularization stated in Government Orders. In the present Government Order, the order only states to regularize the petitioners by creating supernumerary posts. Subsequent Circular states that the petitioners are entitled to Rs.18 as daily wages. Since it is a prerogative right of the employer to grant appointment and to fix salary and other service benefits, in the present case, the respondents have fixed Rs.18 as daily wages which is not acceptable to the petitioners. If that is so, the petitioners ought to have challenged the said order, but the petitioners have not challenged the said order.



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There is no quantification of the salary in any of the orders passed by any Courts, Tribunal and Government Orders. In short, the salary was not at all adjudicated in any Forum.

9. The contention of the petitioners is that in that Writ Appeal, it has been ordered to pay 50% of backwages, but it has not been stated that from which period to which period, the backwages ought to be paid. The respondents subsequently have fixed time scale of pay from the year 2005 and both these orders have not been challenged before any Court of law.

10. Hence, this Court is of the considered opinion that the salary eligibility of the petitioners is not quantified in any of the forum and therefore straight away the claim petitions are not maintainable as per Section 33(C) of the Act. Therefore, the Labour Court has rightly come to the conclusion that the claim petition is not maintainable.

11. The petitioners were taken into service not in any sanctioned vacant posts, but the petitioners were taken into service by creating supernumerary posts. Therefore, the respondent / employer has every right to fix the wages / pay. Since the post is created as a new post by taking into account the financial implications to the Government, the respondents have rightly fixed the wages



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as Rs.18/- from 18.09.2000, the date of regularization and thereafter, has fixed the time scale of pay from 01.04.2005 onwards. Therefore, this Court is of the considered opinion that there is no infirmity in fixing the pay / wages.

12. In the result, this Writ Petition is devoid of merits and the same is dismissed. There shall be no order as to costs.

08.04.2022

Index : Yes / No

Internet : Yes/ No

Nsr

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



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S.SRIMATHY, J.

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