



WEB COPY

W.P. (MD) Nos. 5567 of 2013 & 8295 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 09.03.2022
DELIVERED ON : 02.06.2022
CORAM

THE HONOURABLE MRS. JUSTICE S. SRIMATHY
W.P. (MD) Nos. 5567 of 2013 & 8295 of 2012

and

W.M.P. (MD) No. 11992 of 2018

and

M.P. (MD) Nos. 1 of 2012 & 1 of 2013

W.P. (MD) No. 5567 of 2013

The Management,
0.1616 Palayamkottai Milk Producers
Co-operative Society Ltd.,
11-A, Post Office Road,
Palayamkottai,
Tirunelveli District.

... Petitioner

vs

1. The Deputy Commissioner of Labour,
Authority and Minimum Wages Act, 1948,
Palayamkottai,
Tirunelveli District.

2. S. Arumugam
3. A. Petchaiya
4. L. Petchi
5. M. Sudalaimuthu

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records relating to the impugned order dated 18.09.2012 passed by the first respondent in M.W.98 of 2009 and quash the same as illegal.

For Petitioner : Mr. M. E. Ilango

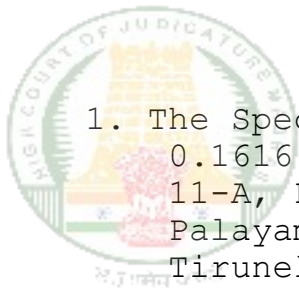
For Respondents : Mrs. D. Farjana Ghoushia for R1
Special Government Pleader
Mr. S. Palanivelayutham for R4
Mr. H. Arumugam for R2, 3 & 5

W.P. (MD) No. 8295 of 2012

L. Petchi

... Petitioner

vs



1. The Special Officer,
0.1616 Palayamkottai Co-op Milk Producers Sangam,
11-A, Post Office Street,
Palayamkottai - 627 002.
Tirunelveli District.

2. The Presiding Officer,
Labour Court,
Tirunelveli,
Tirunelveli District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the order made in claim petition No.29/2010 dated 12-03-2012 on the file of the second respondent and quash the same in relation to disallowing the claim made under various heads such as Deepavali, Pongal Bonus, Leave Salary, Salary for the Government declared holidays, allowance for cycle usages by the employee, employers contribution on the provident fund, payable to the employee and other benefits and consequently direct the first respondent to pay the total claim of Rs.4,05,401/- within a time frame as specified by this Honourable Court to the Petitioner forthwith.

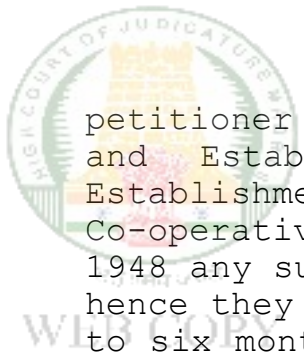
For Petitioner : Mr.S.Palanivelayutham

For Respondents : Mr.M.Jerin Mathew
for Mr.M.E.Ilango

O R D E R

This Writ Petition in W.P.(MD)No.5567 of 2013 is filed by the Management, to quash the impugned order dated 18.09.2012 passed by the first respondent in M.W.98 of 2009 and quash the same as illegal.

2. The brief facts of the case in W.P.(MD)No.5567 of 2013 are that the petitioner is a Co-operative Society governed under the Tamil Nadu Co-operative Societies Act, 1983. Earlier the Society was producing milk of its own by maintaining dairy farm and distributing the same. Thereafter, the petitioner has closed its dairy activities and started distributing the milk sachets procured from Tirunelveli Aavin on commission basis. The Society has become financially weak and unviable. The respondents 2 to 5 were employed as Secretary, Cashier, Salesman and Clerk and has filed the petition alleging and claiming difference in wages for the period from 01.04.2002 to 31.07.2009 before the first respondent Society. The respondents 2 to 5 have already retired from service and alleged their salary were lesser than the wages prescribed under the Minimum Wages Act, 1948. The respondents relied on G.O.Ms.No.44 dated 13.07.2000 and G.O.Ms.No.5 dated 22.05.2005. The contention of the



petitioner is that the said two Government Orders relates to Shops and Establishments coming under the Tamil Nadu Shops and Establishments Act, 1947 and they do not cover the employees of the Co-operative Society. As per Section 20(2) of the Minimum Wages Act, 1948 any such claim has to be made within a period of six months and hence they are not entitled to claim any amount for the period prior to six months and in any event they cannot claim from 2002 onwards. The respondents have not filed any separate application for condoning the delay and has not filed any affidavit explaining the reason for such huge delay. The first respondent has held the petitioner Society is an establishment coming under the Tamil Nadu Shop and Establishment Act, 1947 and has allowed the claim of the respondents 2 to 5 and directed the petitioner to deposit the said amount within a period of 30 days and if the amount is not deposited so, further compensation equivalent to 100% should be deposited together with the awarded amount.

3. The contention of the petitioner is that the direction of the 1st respondent is without jurisdiction. The Co-operative Society is governed under the Tamil Nadu Co-operative Societies Act 1983, which is a self-contained special enactment. The petitioner society cannot be termed as a Shop or an Establishment falling under the Tamil Nadu Shop and Establishment Act, 1947. The petitioner will come under the exemption clause given under Section 4 of the Tamil Nadu Shop and Establishment Act, 1947. The petitioner Society is under financial crunch and it would be further saddled with financial strain, if it is directed to pay Rs.4,34,948/-. Already the petitioner Society is having a debt burden of Rs.4,00,000/-, which is payable to Tirunelveli Aavin and it is running with the meager commission of Rs.0.20 per Liter for the distribution of milk sachets. Aggrieved over the said order of the first respondent, the present writ petition is filed.

4. At the time of admission, this Court has granted the interim stay on condition that the petitioner society shall deposit 50% of the amount as ordered in the impugned order.

5. The writ petition in W.P.(MD)No.8295 of 2012 is filed by L. Petchi to quash the order passed in Claim Petition No.29 of 2010 dated 12.03.2012 on the file of the second respondent in so far as disallowing the claim made under various heads such as Deepavali, Pongal Bonus, Leave Salary, Salary for the Government declared holidays, allowance for cycle usages by the employee, employers contribution on the provident fund, payable to the employee and other benefits and consequently direct the first respondent to pay the total sum of Rs.4,05,401/-.

6. The brief facts of the case as stated in the affidavit filed in the W.P. (MD) No. 8295 / 2012 is that the petitioner was originally working as Gate Keeper in the first respondent concern. On 1.9.1993 the petitioner was terminated from service without



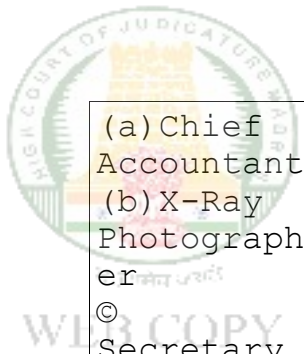
any valid reason. Challenging the same, a dispute was raised under Industrial Dispute Act 1947 in I.D.No.63 of 1994. The first respondent was directed to reinstate the petitioner in service with all backwages vide order dated 17.02.2000. The second respondent has directed that the salary for the period which the petitioner was kept out from the employment has to be given to the petitioner on the basis of the last drawn salary. Based on the order, the petitioner was reinstated by the first respondent. The backwages during the said period of unemployment was not considered by the Labour Court / second respondent. Hence the petitioner submitted various representation to the first respondent and the petitioner has approached the second respondent to pass an order directing the first respondent to pay all dues. In C.P.No.29 of 2010 the said petition was partly allowed, vide order, dated 12.03.2012. This writ petition is filed challenging that portion of the order which was not allowed to the petitioner.

7. The contention of the said Petchi was that the first respondent has to pay a sum of Rs.4,05,401/- under various heads from 01.10.1992 to July 2000, since the first respondent is liable to pay the salary with the subsequent increment and also other benefits payable to the petitioner. From 1994 to 2000, the first respondent is liable to pay bonus for Deepavali and Pongal and also concession payment for the milk to the employee and also has to pay salary for the weekly holiday period and double salary for the Government declared holiday period along with 12% interest for the deposit of Rs.800/- from 1990 to the day on which the claim was made before the second respondent. From 2000, the first respondent is liable to pay allowance for using cycle for the benefit of the first respondent and also interest on the employees contribution amount into the provident fund. According to the first respondent, the petitioner Petchi was eligible to be paid only as Rs.26,884/- and not Rs.4,05,401/- Aggrieved over the disallowance, the petitioner Petchi has filed this writ petition. The petitioner Petchi is one of the respondent in W.P.(MD)No.5567 of 2013.

8. Heard Mr.S.Palanivelayutham, learned Counsel appearing for the petitioner and Mr.Jerin Mathew, learned Counsel appearing for the respondents.

9. The contention of the petitioner Society is that the Society was formed under the Tamil Nadu Co-operative Societies Act which is self contained special enactments. The respondents are claiming for payment of minimum wages under the Shops and Establishment Act and the respondents are specifically relying on Clause-9 in G.O.(2D)No.5 (J1) dated 22.02.2005. The relevant portion is extracted hereunder:

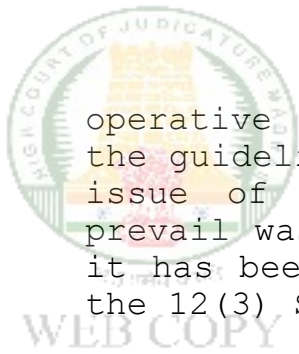
9.Chit Funds and Co-operative Societies:



(a) Chief Accountant (b) X-Ray Photographer © Secretary (d) Auditor	2,269.00	2,235.00	2,202.00	2,169.00
(a) Personal Assistant (b) Jr.Dev.Officer © Legal Asst.	2,242.00	2,202.00	2,163.00	2,130.00

In the said column it is stated in Chit Funds and Co-operative Societies, the posts that are eligible are Chief Accountant, Office Superintendent, Secretary, Auditor and Personal Assistant, Junior Development Officer, Legal Assistant. The second respondent is working as Secretary, the third respondent is working as Cashier, the fourth respondent is working as Salesman and the fifth respondent is working as Writer.

10. The contention of the petitioner is that this column speaks about Chit funds and Co-operative Societies. The Cooperative Societies which are functioning as Chit Funds are applicable and this Government Order is not applicable to the present writ petitioner which is Palayamkottai Milk Producers Co-operative Society Ltd. Even if it is taken for argument sake, the class of employees stated under Sub-clause 9 is applicable, then it is applicable only to the second respondent who was serving as Secretary. For respondent Nos.3 to 5 the said Government order is not applicable. The respondents Nos. 2 to 5 are claiming minimum wages which is granted under Shops and Establishment Act. Under subclause 4(f) of the Tamil Nadu Shops and Establishment Act, this Government Order which was issued under Shops and Establishment Act is not applicable to the petitioner society. The contention of the respondents is that the Shops and Establishment Act is applicable to the petitioner society and they relied on a notification which was issued in the year 1967 invoking the then Cooperative Societies Act 1967. The petitioner submitted that the said notification was issued under the then Co-operative Societies Act of 1967 and subsequently the new Act was enacted in the year 1983. The 1983 Act is a self-contained Act, where all the provisions dealing under Shops and Establishment Act are available in the present Co-operative Societies Act. Moreover, the petitioner Society submitted that the wages are fixed for the employees who are working in Co-



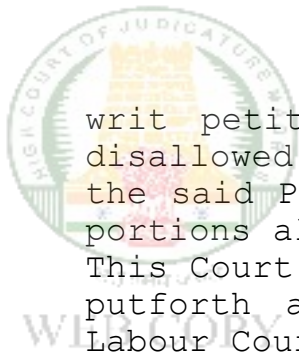
operative Societies either based on 12(3) Settlements and based on the guidelines issued by the Government under Government Orders. The issue of whether the Government Orders fixing the wages would prevail was considered by the Division Bench of this Court, wherein it has been stated that the Government Orders will prevail and not the 12(3) Settlement.

11. The respondents contended that since the Minimum Wages Act is a beneficial legislation, the same would prevail over Co-operative Societies Act or any other settlement. Further amendment was carried out in Co-operative Societies Act where the Primary Co-operative Credit Societies are declared as independent Autonomous Unit and the entire administration affairs can be decided by the said Units itself and the Government has no power to control the said Primary Co-operative Society Units.

12. On perusal of all these enactments, the concept of Co-operative Society ought to be taken into consideration. The Co-operative Society movement gained its importance, since the local people will gain by administering the Unit for its self-employment, the movement gained importance. Based on the movement, periodically there were amendments in the Co-operative Society Act.

13. The issue in this case is covering a period from 01.04.2002 to 31.07.2009 and the Act that is applicable is Co-operative Societies Act, 1983. Under the said Act, the wages are fixed based on 12(3) Settlement and the Government has issued Government Orders by issuing guidelines. Moreover, the Societies are formed to motivate self-employment concept and the wages ought to be fixed by taking into consideration the "income" of the Society. Even though minimum wage is fixed if the income of the society is not permitting to grant Minimum Wages then the society started paying the wages based on the income on pro-rata basis. However, if the society cannot afford to pay and if the unit is financially not viable, then the society cannot be directed to give wages. Moreover, it is submitted in the affidavit of the Management that earlier the Society was producing Milk on its own by maintaining a Dairy Farm. Thereafter, the said dairy activities were closed and it started distributing the Milk Packets by procuring milk from Tirunelveli Aavin Unit on consumption basis. As on date, the Co-operative Society has become defunct. The contention of the respondents 2 to 5 are that they ought to be paid minimum wages under Minimum Wages Act and the said issue was raised after their retirement. As rightly pointed out by the petitioner society, the respondents have not filed any petition to condone the huge delay.

14. Therefore, this Court is of the considered opinion that based on limitation and based on the fact the petitioner Management has become defunct, the impugned order challenged in W.P. (MD) No. 5567 of 2013 is set aside. As far as the W.P. (MD) No. 8295 of 2012 is concerned, already the petitioner was paid by the Society and this



writ petition is filed for that portion of the order which was disallowed under the head of Deepavali and Pongal bonus etc., Since the said Petchi was already reinstated and paid salary, some of the portions alone were disallowed since the Society has become defunct. This Court is of the considered opinion that the said Petchi has not put forth any grounds to interfere with the order passed by the Labour Court and the Labour Court Order is confirmed.

15. Hence the Writ Petitions W.P.(MD)No.5567 of 2013 is allowed and W.P.(MD)No.8295 of 2012 is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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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.

To

1. The Deputy Commissioner of Labour,
Authority and Minimum Wages Act, 1948,
Palayamkottai,
Tirunelveli District.

2. The Presiding Officer,
Labour Court,
Tirunelveli,
Tirunelveli District.

+1 CC to M/s.SPL GP (SR-11142, SR-24284 [F] dated 10/03/2022)

+1 CC to M/s.H.ARUMUGAM, Advocate (SR-24299[F] dated 03/06/2022)

+1 CC to M/s.M.E.ILANGO, Advocate (SR-24374[F] dated 07/06/2022)

W.P. (MD) Nos. 5567 of 2013 & 8295 of 2012

02.06.2022

RD(10.06.2022) 7P 6C