



W.P(MD)No.12940 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED:26.04.2022

CORAM :

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P(MD).No.9279 of 2013

D.Chandran

... Petitioner

Vs.

**1.The Management,
The Tamilnadu Consumers Cooperative-
Federation Limited, through its
Special Officer,
Chennai.**

**2.The presiding Officer,
Labour Court,
Madurai.**

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for records relating to the Award passed in C.P.No.136/2005, dated 30.04.2011, by the Labour Court, Madurai, the second respondent herein and quash the same and consequently direct the first respondent to pay the arrears of salary to the petitioner applicable to the post of Typist as calculated in the Claim Petition.

For Petitioner : Mr.D.Shanmugaraja Sethupathi

For 1st Respondent : Mr.M.S.Suresh Kumar



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ORDER

This Writ Petition has been filed in the nature of Certiorarified Mandamus, seeking to quash the award passed in impugned order, dated 30.04.2011 in C.P.No.136/2005.

2.The petitioner was appointed as Last Grade Servant in Tamil Nadu Consumers Cooperative Federation Limited, through sponsorship by the District Employment Exchange, Madurai, vide proceedings dated 05.10.1977. After completion of probation, the petitioner's employment was regularized. Subsequently, he was promoted as Typist and he is working as Typist since 04.05.1984. The first respondent has fixed scale of pay, vide proceedings, dated 18.05.1994 and has declared the petitioner had completed the probation period satisfactorily on 04.05.1985 and consequently, the first respondent had sanctioned increment of Rs.10/- raising scale of pay with effect from 04.05.1985. Thereafter, the petitioner was reverted to the lower category as Last Grade Servant, consequent to the abolition of single post of Typist by virtue of the proceedings of the first respondent on 27.11.1987.



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3.The contention of the petitioner is that even though the petitioner was reverted to the lower category of the post due to abolition of Typist post, the other service condition including scale of pay and salary had not been altered in the above proceedings, dated 27.11.1987. The further contention of the petitioner is that he was paid scale of pay only applicable to the Last Grade Servant, though the order dated 27.11.1987 was passed by the first respondent did not alter or change the scale of pay and the respondent has arbitrarily paid salary i.e., applicable to Last Grade Servant. Hence, the petitioner submitted a representation, dated 22.04.1988, requesting the first respondent to pay salary applicable to that of typist, which was paid to the petitioner prior to the reversion.

4.The main contention of the petitioner is that though he was reverted to the Last Grade Servant, he has been continuously serving as Typist in the first respondent Federation and also extracted the service as Typist and the petitioner is working throughout his service as Typist only. Therefore, it is not just and reasonable on the part of the first respondent in paying scale of pay i.e., applicable to the Last Grade Servant. The Manager of Madurai Branch had sent a proposal to the Head Office,



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requesting to accord permission to engage daily wages typist to manage typing work. The Manager had also sent another communication, requesting to absorb the petitioner as Typist on the ground that he is continuously working as Typist even after reversion order. The letters of the Branch Manager would demonstrate the fact that due to vacancy of the post of Typist, the functioning of the Madurai Branch came to stand still. All the records relating to the petitioner would show that the petitioner is working only as Typist in spite of the order of reversion order.

5. In the meanwhile, the Government issued an order, dated 25.08.1992 in G.O.Ms.No.401, Cooperation, Food and Consumer Protection Department, whereby, the retrenched employees of the first respondent were absorbed in various Cooperative Institutions and the petitioner was absorbed as Last Grade Servant in Madurai District Central Cooperative Bank. The petitioner was subsequently promoted as Typist on 12.03.1997 and the petitioner is working as Typist in the said Bank till his superannuation. Then, the petitioner had filed a Claim Petition before the Labour Court, Madurai, seeking to pass an award, directing the first respondent to pay the salary applicable to the post of



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Typist with consequential benefits and the same was rejected. Aggrieved over the same, the present Writ Petition has been filed.

6. The respondents filed counter stating that the first respondent Cooperative Federation was having Branch at Madurai, where the petitioner was temporarily appointed as a Last Grade Servant in 1977. The petitioner was also temporarily promoted as typist as he was qualified for the higher post. As the business of the first respondent in the Madurai area was incurring loss and thereafter, the Federation had to resort retrenchment of staff in the Branch. Hence, the post of Typist was retrenched, the persons employed as Typist were downgraded as Last Grade Servant. As there was a vacancy for the post of Last Grade Servant, the petitioner was appointed as Last Grade Servant and the salary applicable to the Last Grade Servant was paid. Since there was no post of typist available even in the Head Office, the petitioner was appointed as Last Grade Servant. The petitioner was reverted to the confirmed post of Last Grade Servant in order to avoid retrenchment. The usual procedure followed in the case of reversion is that the last drawn pay received by him will be fixed in the scale of pay applicable to the lower post and all other allowances attached to the new scale of pay



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will be given. Therefore, the claim of the petitioner cannot be entertained. Moreover, the first respondent's cooperative is in financial distress, therefore, any monetary claim of the petitioner would lead further complication. Moreover the petitioner having accepted the last grade servant post and now the petitioner cannot go turned around, that too, without challenging the earlier order. Hence the claim there is a difference of pay is illegal. Hence, the first respondent prayed to dismiss the present Writ Petition.

7. Heard Mr.D.Shanmugaraja Sethupathi, the learned Counsel for the petitioner and Mr.M.S.Suresh Kumar, the learned Counsel for the first respondent and perused the records.

8. It is seen from the records that the petitioner was originally appointed as Typist. Since the said Typist post was retrenched due to financial constraints in the Society, the respondent with sympathetic consideration, has placed the petitioner in the Union Office in the available vacancy of the Last Grade Servant. Having accepted the said post, the petitioner cannot now turn around and claim to pay the scale of pay i.e., applicable to the Typist post.



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9. The Labour Court has held on perusing the records that the petitioner has not worked as Typist from December 1987. According to the petitioner, from December 1987 to 18.12.1992, the petitioner is entitled to get salary applicable to Typist post. This fact was denied by the respondent by stating that the petitioner was taken into subsequent service in order to avoid retrenchment. Therefore, the petitioner is not entitled to the salary payable to the Typist post.

10. This Court is of the considered opinion that the retrenchment itself is due to the financial distress of the employer, with sympathetic consideration the petitioner was granted last grade post. Having accepted the job, the petitioner is not entitled to claim the salary applicable to the typist post. Moreover, the petitioner has raised the plea belatedly and the same is hit by the principles of delay and laches.

11. The contention of the petitioner is that he was serving as typist and relied on communication, where it has stated the responsibilities of the each job. As far as Typist is concerned, a list of jobs was narrated in the proceedings, dated 30.06.1990. This Court is of the considered



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opinion that even though the petitioner is serving as a Typist in the subsequent appointment granted by the Federation, the same was granted in order to avoid retrenchment, the petitioner was posted in the Last Grade Servant, which was the available vacancy at the time of retrenchment. Since there is no post of Typist at all, the petitioner is not entitled to get salary payable to the Typist. This Court is of the considered view that the salary is payable to the sanctioned post.

12. If the petitioner's plea is accepted, then there is no sanction to the post of Typist. The petitioner is working in an un-sanctioned post of Typist, then the petitioner would not be entitled to any monetary benefits applicable to Last Grade Servant. The petitioner is either entitled to last grade servant sanctioned post or to the Typist unsanctioned post. Therefore, this Court is of the considered opinion that the claim of the petitioner cannot be entertained and hence the claim of the petitioner to pay salary December 1987 to 18.12.1992 is illegal and the petitioner is rejected.



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WEB COPY 13. With the above observations, the Writ Petition stands dismissed. No costs.

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S.SRIMATHY, J.

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To

1.The Management,
The Tamilnadu Consumers Cooperative-
Federation Limited, through its
Special Officer,
Chennai.

2.The presiding Officer,
Labour Court,
Madurai.

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