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W.A(MD)No.198 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE PARESH UPADHYAY

and

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.A(MD)No.198 of 2022

and

C.M.P(MD)No.1928 of 2022

The Management / Special Officer,
NN 576 Poosalakudi Primary Agricultural
Cooperative Credit Society,
Now represent through President,
Devakottai,
Sivagangai District.

.. Appellant / Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
Madurai-20.

2.V.Suriyakala

.. Respondents / Respondents

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent against the order dated 29.11.2021 passed in W.P(MD)No.289 of 2015 on the file of the Honb'le High Court Madurai Bench and pass such further order or other orders as the court may find deemed fit and thus render justice.

Prayer in WP(MD) . 289/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari, to call for the records from the 1st Respondents impugned award made in I.D No. 13/2009 dated 23.07.2014 and quash the same and pass such further or other orders.

For Appellant : Mr.C.G.Pethanaraj

J U D G M E N T

[Delivered by PARESH UPADHYAY, J.]

Challenge in this appeal is made to the order dated 29.11.2021 recorded on W.P(MD)No.289 of 2015. This appeal is by the writ petitioner - management.



2. Learned advocate for the appellant - management has submitted that, the appointment of the second respondent - workman was not in accordance with law and therefore the termination of service could not be said to be illegal in any manner and therefore the award of the Labour Court was unsustainable and therefore the same ought to have been interfered with in the writ petition filed by the management. It is submitted that dismissal of the writ petition and directions by the learned Single Judge to reinstate the workman with continuity of service and other benefits is illegal and therefore the same be interfered with.

3. Learned advocate for the appellant has referred to the document at page No.21, which is dated 12.03.2004, in which, according to him, there is reference to the earlier policy of the State of the year 2001 and keeping in view the said policy, the appointment of the workman, which was on 07.03.2022 was not legal and therefore, the termination should not have been interfered with. It is submitted that this appeal be entertained.

4. Having heard learned advocate for the appellant and having considered the material on record this Court finds as under:

4.1 The workman was appointed on 07.03.2002. The termination of service was on 01.07.2008. The ground taken by the management was that it was under the instructions of the State authorities, since his service could not be regularised. We find from the material on record that, as per the policy of the State, the service of the workman could have been regularised and as a matter of fact such a recommendation was already made by his employer. Whether the services of the workman should have been regularised or not is not the subject matter of this appeal, nor the same needs to be gone into in the appeal filed by the management. We restrict the scrutiny in this appeal to the grievance of the management against the directions given by the learned Single Judge in the order dated 29.11.2021. The directions are as under:-

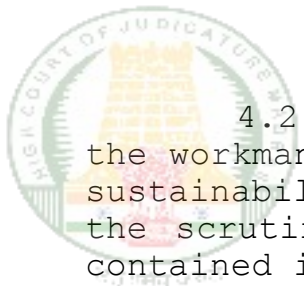
"12. Therefore, this Court passes the following order: (i)The petitioner society is directed to reinstate the 2nd respondent forthwith.

(ii)The petitioner society is directed to grant continuity of service to the 2nd respondent.

(iii)The 2nd respondent is not entitled to the back wages from the date of dismissal i.e., from 01.07.2008 until the interim order passed in writ petition directing to pay the last drawn salary.

(iv)Under the principles of "No work No Pay", the 2nd respondent is directed to repay the 50% of the amount received under the interim order back to the petitioner's society and the petitioner society shall grant instalment to repay the amount.

(v)The petitioner's society shall pay a cost of to the 2nd respondent".



4.2 The directions in (iii) and (iv) are as such against the workman. In the event that part of the order is challenged, the sustainability thereof may be examined on its own merits. Therefore the scrutiny in this appeal is restricted to the final directions contained in para : 12 (i), (ii) and (v), quoted above.

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4.3 It is the settled position of law that, no party can take advantage of its own wrong. Here the case of the appellant itself is that, the appointment ought to have been made through Employment Exchange which it had not made. The appointment in the year 2002 could not have been discontinued in the year 2008 ostensibly on the ground that the initial appointment was without following due process of law.

4.4 We find that the termination of service was illegal and Labour Court had rightly interfered in it. When it was challenged in the writ petition filed by the management, learned Single Judge has also, by recording proper reasons arrived at the conclusion that, the workman was entitled to reinstatement with other benefits. We do not find any infirmity in that part of the order. This appeal is therefore needs to be dismissed.

4.5 While dismissing this appeal, we make it clear that not entertaining this appeal which is filed by the management is not to mean the confirmation of the order of the learned Single Judge, more particularly paragraphs 12(iii) and (iv) of the order, by which the workman may be aggrieved. In the event any challenge is made to it by the workman, the same shall be examined on its own merits.

5. For the above reasons, this appeal is dismissed with the clarifications noted above. No costs. Consequently, connected Miscellaneous Petition is dismissed.

Sd/-

Assistant Registrar (CS-I)

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/ /2022

Sub Assistant Registrar(CS)

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To

The Presiding Officer,
Labour Court, Madurai-20.

+1 CC to M/s.R.SARAVANAN, Advocate (SR-13695[F] dated 23/03/2022)

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