



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.04.2022

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

**W.P. (MD) .Nos.20195 of 2015 and 6048 of 2016
and
W.M.P. (MD) .Nos.1 of 2015 and 5356 of 2016**

W.P. (MD) .No.20195 of 2015

The Management Tirunelveli Special 111 Chandragiri
Primary Agricultural Co-operative Credit Society,
Chandragiri,
Tuticorin District.
Represented by its Secretary

... Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
Tirunelveli.

2.G.Arumugam

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari to call for the records relating to the impugned Preliminary Award dated 14.09.2015 passed by the first respondent Labour Court in I.D.No.25 of 2015 and quash the same as illegal insofar as it relates to directing the petitioner to pay subsistence allowance is concerned and quash the same as illegal.

W.P. (MD) .No.6048 of 2016

The Management Tirunelveli Special 111 Chandragiri
Primary Agricultural Co-operative Credit Society,
Chandragiri,
Tuticorin District.
Represented by its Secretary
V.Pon Madasamy

... Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
Tirunelveli.



2.G.Arumugam

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari to call for the records relating to the impugned Award dated 19.02.2016 passed by the first respondent Labour Court in I.D.No.25 of 2015 and quash the same as illegal.
(In Both Writ Petitions)

For Petitioner : Mr.M.Jerin Mathew

For R-1 : Labour Court

For R-2 : Mr.M.P.Senthil

COMMON ORDER

The Writ Petition in W.P.(MD).No.20195 of 2015 has been filed challenging the preliminary award dated 14.09.2015 in I.D.No.25 of 2015 insofar as it directing the petitioner's Management to pay subsistence allowance to the second respondent. The Writ Petition in W.P.(MD).No.6048 of 2016 has been filed challenging the award dated 19.02.2016 passed in I.D.No.25 of 2015.

2. The brief facts of the case are that the second respondent was appointed as Salesman on 01.03.1989. He was placed under suspension on 03.09.1998. Thereafter, he was dismissed from service on 16.09.1999. The charges against the second respondent is misappropriation of sale proceeds and stealthily removed essential commodities kept for public distribution and thus caused shortage of stocks. The second respondent was placed under suspension on 03.09.1998 and a detailed charge memo dated 06.11.1998 was issued to him. The petitioner submitted that the second respondent refused to participate in the enquiry and adopting delay tactics. Hence left with no other option, the petitioner's Management was constrained to proceed with the Domestic Enquiry. The enquiry officer has held that all the charges levelled against the second respondent is proved. By accepting the said findings, the petitioner's Management following the due process of law dismissed the second respondent on 16.09.1999. The second respondent aggrieved over the dismissal order, filed I.D.No.66 of 2002. Aggrieved over, the Management filed Writ Petition in W.P.(MD).No.2621 of 2009 and this Court vide order dated 18.12.2012 disposed the Writ Petition. Thereafter, again an enquiry officer was appointed and an enquiry was held on 20.03.2013. The second respondent appeared before the enquiry officer and when the enquiry officer put forth a specific question before the second respondent about the misappropriation, the second respondent agreed the guilt and accepted his misconduct without any



hesitation. Therefore, the Management requested time to examine further witness, hence the enquiry was adjourned to 26.03.2013. Again the second respondent did not appear and it is adjourned to 16.04.2013. The second respondent sought adjournment vide letter dated 15.04.2013 on the ground of ill health. Again the enquiry was conducted on 24.04.2013. Again the second respondent did not appear before the enquiry officer. The ex-parte proceedings were proceeded and final report was submitted on 07.05.2013. By accepting the findings of the enquiry report, the petitioner's Management issued a show cause notice to the petitioner and the second respondent submitted an explanation. Thereafter, after considering the said explanation, the second respondent was dismissed from service by an order dated 12.08.2013. Aggrieved over the dismissal order, the Labour Court filed I.D.No.25 of 2015. The said I.D was preferred without approaching the District Conciliation Officer.

3. The contention of the petitioner is that since the second respondent was dismissed earlier and the petitioner's Management was directed to conduct denova enquiry, there is no necessity for any payment of subsistence allowance. Therefore, the petitioner's Management submitted that the Management is agreed with the order passed by the Labour Court. As far as the payment of subsistence allowance is concerned, the petitioner's Management filed the Writ Petition in W.P.(MD) No.20195 of 2015. Subsequently, the entire issue was considered by the Labour Court and an award was passed setting aside the dismissal order and directed the petitioner's Management to reinstate the second respondent with continuity of service and directed to pay full back wages which includes the subsistence allowance already ordered by this Court in the preliminary award dated 14.09.2015. Aggrieved over by the said order, the present Writ Petition is filed by the Management. The learned counsel for the second respondent submitted that the calculations memo dated 21.04.2022 has been circulated before this Court. When this Writ Petition was filed, this Court granted an interim order with respect of payment of back wages alone. The petitioner's Management has filed Miscellaneous Petition in M.P.(MD) No.1 of 2015 and W.M.P.(MD).No.5356 of 2016. This Court vide order dated 02.03.2017 has directing the petitioner's Management to pay wages under Section 17(B) of the Act and the wages shall be paid from the date of the award. It is submitted by the learned counsel for the petitioner's Management that the wages are not paid because the society is not functioning till date.

4. Heard Mr.M.Jerin Mathew, learned counsel for the petitioner and Mr.M.P.Senthil, learned counsel for the second respondent and peruse the records.

5. The learned counsel for the respondent submitted that the second respondent is 55 years old in which he has 3 more years in service period. But the learned counsel for the petitioner's



society submitted that the society has become defunct, the question of reinstatement cannot be considered and even the continuity of service cannot be granted, since the society is not functioning and not in existence. The learned counsel for the second respondent submitted a calculation memo, whereas, he has claimed wages from the period of 10.09.1999 to 19.02.2016 and the second respondent has been receiving Rs.1284 per month. Therefore, the second respondent is eligible for an amount of Rs.2,77,344/- (Rupees Two Lakhs Seventy Seven Thousand and Three Hundred and Forty Four only).

6. Taking all these facts into consideration, this Court is of the considered opinion that the second respondent is eligible for monetary benefits. Therefore, this Court is directing the petitioner's Management to pay the compensation amount of Rs.2,00,000/- (Rupees Two Lakhs only) as full and final settlement to the second respondent. The said amount shall be paid within a period of six (6) weeks from the date of receipt of a copy of this order.

7. With the above direction, the Writ Petitions are disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Protocol)

// True Copy //

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Sub Assistant Registrar(CS)

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.

To

The Presiding Officer,
Labour Court,
Tirunelveli.

+1 CC to M/s.M.P.Senthil, Advocate (SR.No.21341)

+1 CC to M/s.M.E.Elango, Advocate (SR.No.21424)

W.P. (MD) .Nos.20195 of 2015 and 6048 of 2016

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