



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 03.02.2021

Pronounced on : 08.03.2022

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P.(MD)No.21509 of 2015

Solaimuthu

... Petitioner

vs.

1.Tiruchirapalli Co-Operative House
Construction Society Limited,
represented by its Special Officer,
Makkal Mandram, Thillai Nagar,
Trichy-620 018.

2.The Presiding Officer,
Labour Court, Tiruchirapalli.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for all the records of order of the 2nd respondent herein, dated 08.07.2015, pertaining to C.P.No.87 of 2011 and to quash the same.

For Petitioner	: Mr.K.Rajmohan
For R1	: Mr.K.C.Ramalingam
R2	: Labour Court

O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorari, to quash the order of the 2nd respondent herein, dated 08.07.2015, pertaining to C.P.No.87 of 2011.

2.The brief facts of the case are that the petitioner was employed on 10.07.1981 by the first respondent on monthly salary basis. The contention of the petitioner is that the first respondent maintains attendance register and salary register and in addition to the salary, the first respondent was in a practice of giving festival advance to the employees and the same was paid back by installments to the first respondent. The first respondent has utilized the petitioner's service for more than 19 years without providing any benefits under any of the acts. The petitioner requested orally to the first respondent for granting permanent status, since he has completed 480 days in 24 calendar months. Since the same was not granted, the petitioner filed a Claim Petition C.P.No.9062 of 2000, before the competent authority under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, for conferment of permanent status to the petitioner. The competent authority after enquiring both the parties, on 03.05.2001, directed the first respondent



to confer permanent status to the petitioner within a period of 30 days from the date of receipt of a copy of the order. Aggrieved over the same, the first respondent filed a Writ Petition in W.P.No.20674 of 2001, before the Madras High Court. Initially the petition was admitted on 31.10.2001 and the said application for stay was dismissed on 16.09.2003 and the Writ Petition was dismissed on 31.03.2010, with the observation that the second respondent has correctly come to the conclusion for conferment of permanency to the first respondent therein, and the employer has not preferred any Writ Appeal against the dismissal of the Writ Petition and therefore, the said permanency order has become final. The petitioner approached the first respondent to pay all the benefits but the first respondent gave evasive reply that they would prefer Writ Appeal but till date no Writ Appeal was filed. In the meanwhile, the petitioner filed a Claim Petition C.P.No.87 of 2011, before the second respondent to compute the benefits to the tune of Rs.3,57,000/- based on last drawn wage of Rs.3,000/- for a period from May 2001 to March 2011. However, the second respondent passed the impugned order, dated 08.07.2015, dismissing the claim of the petitioner. Aggrieved over the same, the present Writ Petition is filed.

3. The respondents have filed a counter affidavit admitting that the petitioner was employed on daily wages since 10.07.1981. The petitioner filed a Claim Petition in C.P.No.9062 of 2020 and the competent authority has granted permanent status on 03.05.2001. The first respondent preferred Writ Petition and the same was dismissed and the employer was contemplating to file writ appeal, but has not preferred any writ appeal. In the meanwhile, the petitioner has preferred C.P.No.87 of 2011 and the Claim Petition was dismissed by the Labour Court on the ground that the petitioner has not studied up to eighth standard and the transfer certificate which was produced by the petitioner itself is false and the petitioner fraudulently obtained the transfer certificate. The first respondent approached the Headmistress of St. Joseph Primary School, vide letter, dated 05.11.2014 and through reply, dated 14.11.2014, the School has stated that the transfer certificate stands in the name of P. Solaimuthu and has been compared with the School admission records and that the Admission No.2092 was not registered in his name and therefore, the petitioner has not studied eighth standard in the said School. Thereafter, the Labour Court has come to the conclusion that the petitioner has obtained false certificate and based on the false certificate has obtained the appointment order. Hence, dismissed the claim petition filed by the petitioner. The first respondent contended that the petitioner was neither appointed through employment exchange nor promoted by the Registrar of the Co-operative Society. The petitioner has produced a false certificate and therefore, the petitioner is not entitled to any permanency and prayed for dismissal of the Writ Petition.



4. Heard Mr.K.Rajmohan, learned Counsel appearing for the petitioner and Mr.C.Rama Lingam, learned Counsel appearing for the first respondent and perused the materials placed on record.

5. Both the petitioner and the first respondent admitted that the petitioner was appointed on 10.07.1981, as daily wage employee. The first respondent contested the petition filed under Permanent Status Act and that has attained finality. In such circumstances, the consequential monetary benefits including increments and time scale of pay ought to have been paid by the first respondent. Unfortunately, the petitioner has filed the Claim Petition in C.P.No.87 of 2011 claiming salary from May 2001 to March 2011. It is admitted that the first respondent has not paid any monetary benefits, after conferring permanent status to the petitioner. Therefore, this Court is directing the first respondent to pay all statutory benefits including increments and time scale of pay from the date of completion of 480 days, i.e., from 11.07.1983 onwards.

6. After the permanency order was passed under Permanent Status Act on 03.05.2001, the first respondent did not allow the petitioner to work. However, the respondents contended that the petitioner did not report to the duty. This factor was vehemently refused by the petitioner and has relied on the counter filed in C.P.No.87 of 2011 and a relevant portion is extracted under:

"6) The allegation that the petitioner was not given employment since 3-5-2001 from the date of order passed by the competent authority is not correct. Actually this respondent filed the writ petition before the Hon'ble High Court, Madras and the same was pending till 31-3-2010. On 31-3-2010 the said Writ petition was dismissed. The said dismissal of writ petition has not been informed. Hence they were not able to take suitable action.

7) This respondent is going to file a Writ Appeal."

7. On perusing the contents of the counter affidavit, it is clear that the respondents did not allow the petitioner to attend the work. The first respondent has denied that since the dismissal of the Writ Petition was not informed to the first respondent, suitable action was not taken by the respondents. Moreover, the respondent was contemplating to file the Writ Appeal. Because of these factors, the first respondent did not allow the petitioner to join the duty. This Court is also taking into consideration that from 2001 to 2011 the petitioner has not worked and under no work no pay principle, the petitioner may not be entitled to any monetary benefits. However, taking into consideration that it is not the mistake of the petitioner but, it is the mistake of the first respondent, who did not allow the petitioner to join duty, this Court is inclined to grant relief to the petitioner.



8. Therefore, this Court is of the considered opinion that to meet the ends of justice, the petitioner is entitled to 50% of monetary benefits from the year 2001 to 2011. It is also submitted that the petitioner has attained superannuation in the year 2020. However, the petitioner is not entitled to any monetary wages or other benefits from the year 2011 until superannuation. Therefore, this Court is directing the first respondent to pay all monetary and service benefits including increment with time scale of pay from 11.07.1983 to 03.04.2001 and thereafter, pay 50% backwages from 04.05.2001 to March 2011, the same shall be paid within a period of six weeks.

9. With the above direction, the Writ Petition is disposed of. No costs.

Sd/-

Assistant Registrar (Ad-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Tmg

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 Special Officer,
Tiruchirapalli Co-Operative House
Construction Society Limited,
Makkal Mandram, Thillai Nagar,
Trichy-620 018.

2. The Presiding Officer,
Labour Court, Tiruchirapalli.

Copy to

The Section Officer, V.R. Section,
Madurai Bench of Madras High Court, Madurai



+1 CC to M/s.K.C.RAMALINGAM, Advocate (SR-10525[F] dated 08/03/2022)
+1 CC to M/s.K.RAJMOHAN, Advocate (SR-10805[F] dated 09/03/2022)
Order made in

W.P. (MD) No.21509 of 2015
08.03.2022

SS (CO)
KB(17.03.2022) 5P 7C