



W.P.(MD)No.22904 of 2015

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **28.11.2022**

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.22904 of 2015

and

M.P.(MD)No.1 of 2015

The Management,
O.2096 Muthukrishnapuram Primary
Agricultural C-operative Credit Society,
Krishnapuram,
Kadayanallur Taluk,
Tirunelveli District – 627 759,
represented by its President,

... Petitioner

Vs.

1. The Presiding Officer,
Labour Court,
Tirunelveli.

2. A.Ramesh Babu

3. The Joint Registrar,
Co-operative Societies,
Tenkasi.

... Respondents

***(R3, suo motu impleaded, vide Court Order,
dated 28.11.2022 in W.P.(MD)No.22904 of 2015)***



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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 order, dated 30.12.2014 passed by the first respondent in C.P.No.12 of 2014 (received on 04.02.15) and quash the same.

For Petitioner : Mr.M.Jerin Mathew

For R1 : Labour Court

For R2 : Mr.M.P.Senthil

For R3 : Mr.P.Thambidurai
Government Advocate

ORDER

This writ petition is filed challenging the impugned order passed by the first respondent, dated 30.12.2014.

2. The petitioner is a Primary Agricultural Co-operative Credit Society and the second respondent was appointed as Night Watchman on temporary basis during the year 1987. Subsequently, the second respondent was granted Peon post from 10.05.1991. The Salesman post fell vacant due to the retirement of the incumbent on 31.05.1998. The



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second respondent submitted a representation to the Special Officer to appoint him in the said vacancy. Thereafter, the second respondent was appointed in the said Salesman post from 01.02.1999. In the meanwhile, the second respondent was regularized as Night Watchman with effect from 2001. On 18.01.2006, since the petitioner was receiving less salary in the post of Salesman, the petitioner had filed C.P.No.12 of 2014. The said Claim Petition was allowed. Aggrieved over the same, the petitioner Society has preferred this writ petition.

3. The contention of the petitioner Society is that the second respondent without raising any industrial dispute has preferred Claim Petition petition before the Labour Court which is against the provisions of Section 33C(2). Moreover, the second respondent was working without any objection for the past nine years in the post of Salesman. Now the second respondent cannot raise objection to work in the post of Salesman, since he is receiving less salary.

4. The learned Counsel appearing for the second respondent



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submitted that the second respondent was regularized to the post of Night Watchman, hence he is entitled to the salary that is applicable to the post of Night Watchman.

5. After hearing the rival contention, this Court has given anxious consideration to the issue raised before this Court. The second respondent without raising an Industrial Dispute has filed a Claim Petition before the Labour Court. The contention of the petitioner Society is that when there is a dispute between the petitioner and the second respondent on the entitlement of the eligibility salary, the second respondent ought not to have filed a Claim Petition straight away which is against the Section 33C(2). The petitioner was regularized in the Night Watchman post, but based on the request of the second respondent he was posted in the post of Salesman. Now the question arises whether the second respondent is entitled to the Night Watchman post salary or the Salesman salary. When the writ petition was heard, both the petitioner and the second respondent raised several issues. Therefore this Court is of the considered opinion that the petition under section 33C(2) is not



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maintainable.

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6. However this Court in order to provide overall justice, is proceedings to hear the petition under Article 226.

7. The second respondent has submitted a specific request to promote to the said post when vacancy arises. Based on the representation, the petitioner Society has passed a resolution and appointed the second respondent in the post. When it comes to the issue of regularization, since the Society is granted the cadre strength with the post of Night Watchman, the Society has regularized the service of the second respondent in the post of Night Watchman, vide proceedings, dated 18.12.2006 with effect from 2001. The second respondent subsequently found that his salary is lesser in the post of Salesman. Therefore, is claiming salary that is applicable to the Night Watchman post. Since the second respondent has specifically requested for promotion, he cannot turn around to seek more salary which is not applicable to the Salesman post. Now the second respondent is willing to



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continue in the post of Night Watchman only and claims the salary applicable to the post of Night Watchman.

8. After hearing the rival contentions, this Court is of the considered opinion that the second respondent is eligible to the Salesman salary from 1999 till the date of award i.e., 30.12.2014. From 01.01.2015, the second respondent is eligible for the salary of Night Watchman and is entitled to all the consequential benefits that is applicable to him.

9. This Court, *Suo Motu* impleaded the Joint Registrar, Co-operative Societies, Tenkasi. The Joint Registrar shall implement this order within a period of eight (8) weeks from the date of receipt of a copy of this order.

10. With the above said direction, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

28.11.2022

Index : Yes / No
Internet : Yes / No
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To

1. The Presiding Officer,
Labour Court,
Tiruneveli.
2. The Joint Registrar,
Co-operative Societies,
Tenkasi.



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S.SRIMATHY, J

jbr

Order made in
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28.11.2022