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W.P. No.30147 of 2005

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2023

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P. No.30147 of 2005
and W.P.M.P.No.33036 of 2005

The Management
Salem Agricultural Producers
Co-operative Marketing Society
305, Sooramangalam Main Road
Salem 9.

... Petitioner

VS.

1.The Presiding Officer
Labour Court
Salem.

2.Vasanthi
W/o Late Subramani

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, to pass a Writ of Certiorari, calling for the records of the 1st respondent in its award dated 28.04.2005 in C.P.No.264 of 2003 and quash the same.

For petitioner : Mr.A.S.Vijayaragavan

For respondents : Mr.K.V.Shanmuganathan for R2
For R1 - Court



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ORDER

This Writ Petition is directed against the impugned order passed by the first respondent / Presiding Officer, Labour Court, Salem in C.P. No. 264 of 2003 dated 24.04.2005 in and by which a direction was given to the petitioner Society for payment of Rs.1 lakh, to the second respondent herein, allowing her application filed under Section 33(c)(2), wherein she has claimed family welfare fund on the death of her husband viz., Mr.Subramani.

2. Assailing the above order, the learned counsel appearing for the petitioner Society would submit that the Computation Petition filed by the second respondent, after the death of her husband Late Subramani, in C.P. No. 264 of 2003 before the first respondent, under Section 33 (c)(2) of the [Industrial Disputes Act](#), seeking a claim of Rs.1 lakh, without there being any basis, ought not to have been allowed by the first respondent. When the computation petition was filed by the second respondent, a detailed counter affidavit was filed by the petitioner Society, taking a specific plea that the said computation petition was not maintainable since no pre-determined right has been accrued in favour of the second respondent.



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3. It was also further contended that the conditions of service of the employees are governed by various rules and regulations. Ignoring the said plea, first respondent directly allowed the computation petition for payment of Rs.1 lakh to the second respondent herein. As the approach adopted by the first respondent is contrary to law, the same is liable to be set aside. Further, [Section 33\(c\) \(2\)](#) being an execution provision, the second respondent cannot invoke the said provisions, unless she has got a pre-determined right accrued in favour of her or in favour of her deceased husband - Subramani. When the second respondent was unable to show that there was a pre-determination existing, the computation petition under [Section 33\(c\) \(2\)](#) being not maintainable, ought not to have been allowed.

4. Opposing the same, learned counsel appearing for the second respondent submitted that the husband of the 2nd respondent Late Subramani was employed in the petitioner Society from 01.12.1982 on daily wages basis, however, when the petitioner Society refused to regularise his services although he was working regularly on those days. Thereafter, by an order dated 12.01.1999, second respondent's husband obtained an order of



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permanency. Therefore, Late Subramani, husband of the second respondent is entitled to get full salary. In view of that, the second respondent, after the death of her husband moved a Computation Application under [Section 33\(c\)\(2\)](#) before the first respondent. That was also ordered in favour of the second respondent on 28.04.2005, therefore, no interference is called for, in the impugned order.

5. Heard the learned counsel appearing for the petitioner Society and the learned counsel appearing for the second respondent.

6. Admittedly, the second respondent's husband joined in the service of the petitioner Society with effect from 01.12.1982 and was paid a consolidated sum of Rs.900/- per month. While so, as per the directions of the Labour Inspector, services of the second respondent's husband was regularised from 01.12.1982. Upon the death of the said Subramani on 27.02.2002, the second respondent filed a petition under Section 33 (c)2 of the Industrial Act in C.P.No.264 of 2003 and the same was allowed in favour of the second respondent, by directing the petitioner Society to pay a sum of Rs.1 lakh as family welfare fund. The first respondent while allowing the



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computation petition, mainly relied on the Ex.P.1 – order of the Labour Inspector dated 18.01.1999, which governs the pre-determined right accrued upon the deceased Subramani and the petitioner Society is duty bound to confer permanent status to the second respondent's husband. If so, she would have been got the benefit of Family Welfare Fund automatically, after the death of her husband. The inaction on the part of the petitioner Society in executing the above mentioned order alone contributed for filing of this Writ Petition. Thus, the order passed by the first respondent in C.P.No.264 of 2003 dated 28.04.2005 warrants no interference at the hands of this Court.

7. Accordingly, this Writ Petition stands dismissed. No costs. Consequently connected miscellaneous petition is closed.

02.02.2023

Jer/Nvsri

Index :Yes/No

Internet:Yes/No

Speaking order/Non-speaking order

Neutral citation:Yes/No



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To
The Presiding Officer
Labour Court
Salem



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J.NISHA BANU, J.

Jer

ORDER MADE IN
W.P. No.30147 of 2005

02.02.2023