



WEB COPY



W.M.P. No. 5809 of 2023

**W.M.P. No. 5809 of 2023
in
W.P. No. 3571 of 2023**

P.D. AUDIKESAVALU, J.

The parties are hereinafter referred to as per their description in the Writ Petition for the sake of clarity and convenience.

2. Heard Mr. L.P.Shanmugasundaram, Learned Counsel for the Second Respondent, Ms. Reshmi Christy, Learned Counsel for the Petitioner and Mrs. R.Anitha, Learned Special Government Pleader appearing for the First Respondent and perused the materials placed on record, apart from the pleadings of the parties.

3. The Second Respondent, while working as Assistant in Tiruvannamalai District Central Co-operative Bank Ltd., which is the Petitioner in the Writ Petition, was dismissed from service by Order in Na. Ka. No. 826(1)/2020/E1 dated 05.01.2021 passed by the Petitioner pursuant to the enquiry conducted for certain acts of misconduct said to have been committed by her. In the Review Petition in Na. Ka. No. 865/2021 SAPA filed against the said order by the Second Respondent under Section 153 of the Tamil Nadu Co-operative



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Societies Act, 1983, it was held by the First Respondent by order dated 25.02.2022 that the punishment inflicted by the Petitioner on the Second Respondent was disproportionate to the charges proved and the order of dismissal dated 05.01.2021 was set aside and instead an order was passed for withholding the increment with cumulative effect for a period of five years, which is challenged by the Petitioner in the Writ Petition.

4. The Second Respondent has filed this Miscellaneous Petition claiming last drawn wages from the Petitioner under Section 17-B of the Industrial Disputes Act, 1947, along with the requisite affidavit stating that she has not been gainfully employed elsewhere. The claim has been made for the period from 25.02.2022 till reinstatement.

5. Though the impugned order has been passed under the Tamil Nadu Co-operative Societies Act, 1983, the benefits under Section 17-B of the Industrial Disputes Act, 1947, would be available to an employee of a Co-operative Society, like the Second Respondent in this case, as observed by the Division Bench of this Court in *Sri Mushnan Centre Teachers Co-op. Thrift and Credit Society -vs- P.Motacharackim* (Order dated 22.03.2019 in W.A. No. 924 of 2019) referring to earlier decisions in that regard.



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6. The Petitioner has filed Counter-Affidavit dated 12.04.2023 in this Miscellaneous Petition, but has not made any averment or produced any material showing the gainful employment of the Second Respondent during the relevant period. Since the assertion of the Petitioner that she has not been gainful employed elsewhere remains uncontroverted, she is entitled to the same rate of wages that she was receiving at the time of termination on 05.01.2021 from the time of filing of the Writ Petition on 03.02.2023 until further orders. The monthly payment for the said amount with effect from May 2023 onwards shall be made on the due dates and the arrears that have accumulated till April 2023 shall be paid by 31.07.2023. It is made clear that if it is intended to extract work from the Second Respondent prospectively, the Petitioner is not precluded from reinstating her in service on payment of wages to her at the rate applicable in terms of the impugned order passed by the First Respondent, subject to the result of the Writ Petition.

In fine, this Miscellaneous Petition is ordered on the aforesaid terms. No costs.

28.04.2023

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Note: Issue order copy by 15.05.2023.



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