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W.P.No.654 of 2023 & W.M.P. No.598 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2023

CORAM :

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

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The Management of
Dharmapuri District Co-operative Milk Producers
Union Ltd.

Represented by its General Manager,
Mr.P.R. Kamaraj,
Salem Main Road, Kanagamutlu Post,
Krishnagiri District.

... Petitioner

Vs.

1. K. Aslam
2. K.Rangasamy
3. B.Ameer Basha
4. A. Mathiyan
5. P. Srinivasan
6. M. Narasimhan
7. Shameem
8. Suguna
9. R. Naveen Kumar
10. Padmavathi

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records pertaining to the Award dated `13.07.2022 made in Claim Petition in C.P.No.28/2019, on the file of Labour Court, Hosur, and quash the same.



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For Petitioner : Mr.S. Silambanan
Additional Advocate General
Assisted by I.John Arockiadas
For Respondents : Mr. Balan Haridas

ORDER

This petition is filed challenging the Award dated 13.07.2022 in the Claim Petition in C.P.No.28/2019 on the file of the Labour Court, Hosur. The petitioner is the Management of Dharmapuri District Cooperative Milk Producers Union represented by its General Manager having its office in Krishnagiri. The respondents are ten in number who are the aggrieved salesmen of the Hosur Milk Sales unit in Krishnagiri District. The Claim Petition was filed under Section 33-C(2) read with 33-C(5) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the ID Act"), in the Labour Court.

2. The respondents 1 to 6 are the actual aggrieved salesmen and respondents 7 to 10 have been impleaded as LR's of the deceased salesmen who were originally parties in W.P. No.2304/1996. All the salesmen joined the petitioner Milk Union in 1984 as part time salesmen but were orally terminated from service with effect from 01.12.1986



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when the new system of milk distribution through agents was introduced abolishing the existing system of direct distribution system as several malpractices were reported in the latter. According to the petitioner Milk Union, in September 1986 itself application for engagement of sales agent were invited and preference was given to the existing salesmen who were recruited through the Employment Exchange. The respondents preferred working under the sales agents as casual workers though they were given an option to work with the petitioner Union. They were only part time employees. In 1990s, they had raised industrial disputes claiming permanency and challenging the oral termination of services in I.D. Nos. 285, 286, 287, 288, 289, 290 of 1992 and 1117, 1118, 1119 and 1275 of 1993 in the Labour Court, Vellore in which an Award dated 30.12.1994 was granted. The Labour Court had then awarded a compensation of Rs.4,000/- to each of the ten salesmen, while dismissing their claim for reinstatement. The Award also entitled the salesmen to Rs.1,000/- (one set).

3. The aggrieved respondents (ten salesmen) had then approached this Court in W.P. No.2304/96 challenging this Award in which the operative portion of the judgment dated 12.03.2004 reads as follows.



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"With the result, I am inclined to allow the Writ Petition directing the second respondent to reinstate all the petitioners in service with effect from 01.01.2004 with all continuity of service. However, it is made clear that the petitioners will not be entitled to any arrears of salary from the date of the termination till 01.01.2004."

This was confirmed by this Court in W.A. No.799/2005 on 04.12.2006 and again in SLP(C) No.8369/2007 on 08.07.2014. Both these appeals were preferred by the present petitioner (Union).

4. Armed with these orders, it appears, the respondents had approached the petitioner Union with representations in 2014, but only eight of them had got offer to join afresh as daily wagers. This, according to them, was a wilful disobedience of the Court order. So the aggrieved respondents filed a Contempt Petition in CP/2803/2015 which was dismissed as withdrawn. Subsequently, their Claim Petition in C.P.No.58/2017 in Labour Court, Salem, was transferred to Labour Court, Hosur and renumbered as C.P.28/2019. The Labour court, Hosur



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in its Award dated 13.07.2022 allowed the Claim Petition and ordered for payment of arrears to all the existing salesmen and legal heirs of the deceased salesmen, which is challenged in this Writ Petition. The arrears calculated by the Labour Court was for the period beyond 01.01.2004 till the date of retirement/death, etc., of the salesmen.

5. Mr.S. Silambanan, learned Additional Advocate General assisted by Mr.I. John Arockiadas, learned counsel appearing for the petitioner Milk Union would contend as follows:

- a) The salesmen were only part time employees and had not opted to join the Milk Union as an agent when offered in 1986.
- b) They were offered to rejoin in the same cadre in 2014 vide letter dated 24.10.2014 pursuant to the Court orders which they refused to do so.
- c) The Labour Court had grossly erred in reproducing the judgment in W.P. No.2304/1996 in its order. When the judgment reads as "will not be entitled to any arrears of salary" the Labour Court in its order has observed as "will be entitled to arrears of salary" which is unacceptable by any standard.
- d) The aggrieved salesmen who litigated have made a hypothetical



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case by comparing themselves with a junior salesman who was reinstated and made a mazdoor in the regular pay scale and has demanded arrears of salary at par with him.

- e) The judgment in W.P.No.2304/1996 was categorical in spelling out that the respondents "will be employed only in the same terms as they were working originally" and therefore the refusal to rejoin as daily wager which was offered in 2014, is the fault of the respondents and claiming arrears on hypothetical basis merely because the judgment in W.P. No.2304/1996 stated 'continuity in service' is illogical. According to him, continuity in service applies only if the employee rejoins and not otherwise.

It was also argued by him that there was no justification in the Award of the Labour Court and it appears to defy logic especially in the light of the content and interpretation thereof of the judgment in W.P. No.2304/1996.

6. Per contra, Mr. Balan Haridas, learned counsel for the respondents contended that in 2014 when they (8 of the 10) were called to the office of the petitioner Union they were offered to join afresh as daily wagers, which was not only against the directions of the Court in W.P. No.2304/1996 but also illegal. It was also contended that the



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petitioner Union deliberately avoided the term 'reinstated' in letter to circumvent the orders of the Court and hence they had no other option than to approach this Court with a Contempt Petition. According to him, this long drawn legal battle took the toll of four lives and yet the end of the tunnel was not visible. Therefore, it was argued that the best recourse they had was the Labour Court which rendered justice to them. The learned counsel for the respondents relied on the following judgments:

- 1) *Harinder Singh and others vs. State of Punjab and another reported in 1984 (supp) SCC 351.*
- 2) *Punjab State Electricity Board vs. Labour Court, Bhatinda reported in 1995 (1) LLN 194.*
- 3) *M/s. Jogi Industries vs. The presiding Officer and another reported in 1997 LLR 443.*
- 4) *S. Gandhimathi vs. Deputy Registrar of Co-operative Societies and others reported in 2003(3) LLN 743.*
- 5) *V. Krishnan vs. Regional Labour Commissioner, Ernakulam and others reported in 2014 (4) LLN 183 (Ker.)*
- 6) *Delhi Transport Corporation vs. Shri Satnarain reported in 2019*



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7) *Kerala State Transport Corporation vs. V. Mohanan and 4 others* reported in 2020 (1) 1 690 (Ker.)

8) *Nandkishore Shravan Ahirrao vs. Kosan Industries Private Limited* reported in 2021 (14) SCC 781.

9) *Decision of this Court in K. Subramanian vs. The Presiding Officer and another (W.P. No.15960 of 2014)*

7. Before proceeding further into the case let me reproduce the relevant contents of judgment in W.P. No.2304/1996 dated 12.03.2004.

"As regards the contention of the learned Senior Counsel for the respondent that the petitioners cannot be absorbed as whole time employees of the Corporation, there can be no doubt over the proposition that the petitioners herein will be employed only in the same terms as they were working originally".

"However, having regard to the fact that the petitioners/employees have not been discharging any duty after they were terminated, they will not be entitled to any.



back wages".

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"With the result, I am inclined to allow the Writ Petition directing the second respondent to reinstate all the petitioners in service with effect from 01.01.2004 with all continuity of service. However, it is made clear that the petitioners will not be entitled to any arrears of salary from the date of the termination till 01.01.2004. The Writ Petition is ordered subject to the above terms."

7.1. Two striking aspects of this judgment in W.P. No.2304/1996 which was confirmed by the Apex Court, are

- a) Reinstatement in the same cadre with continuity in service.
- b) No back wages for the period upto 01.01.2004.

The legal process in form of appeals against the W.P. No.2304/1996 culminated only in July 2014 and on 24.10.2014 the eight (living) salesmen were called to the office. It appears that all the eight (respondents) of them were offered employment as daily wagers, the original position they had held. The respondents refused to join and instead approached this Court with a contempt petition. The findings of



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the order in the Contempt Petition in C.P. No.2803/2015 throws light on

the mindset of the respondents. It reads as follows:

"After some arguments, learned counsel for the petitioners seeks to withdraw the contempt Petition and states that in case the petitioners claim any substantive rights of regular employment, they will take recourse to separate independent legal remedy".

So it is evident that the respondents wanted only regular employment in the sense that they be made permanent and not reinstated as daily wagers. I do not comprehend as to how this would be in accordance with the verdict in the W.P. No.2304/1996.

7.2 As regards the back wages, the Labour Court has gone ahead with the presumption that back wages are payable as ordered by this Court in W.P. No.2304/1996, which is untrue. The plea of the respondents in the Claim Petition was that they ought to be treated as a regular employee and compared with a junior who was reinstated and



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then absorbed in the regular service as Mazdoor/Factory Assistant. This contention was accepted by the Labour Court that, had they been reinstated after the Court Orders, they would have been entitled for regularisation of service and back wages from 01.01.2004. In my opinion this date 01.01.2004 does not have any particular relevance except that the judgment in W.P. No.2304/1996 was delivered on 12.03.2004. It has to be noted that, had they been reinstated pursuant to the offer letters of the petitioner Union dated 24.10.2014, 10.11.2014, 28.11.2014 and 09.04.2015 as daily wagers (the position which they held before termination) their claim for any back wages after 01.01.2004 could have made some sense. But it is conspicuous that they never joined in service. Their intention was to join or get reinstated only as a regular employee which is again a matter which was never the bone of contention in the W.P. No.2304/1996. Their only contention in the W.P. No.2304/1996 was that their oral termination was in gross violation of Section 25F of the ID Act, 1947. They had prayed for reinstatement, back wages and other attendant benefits. The petitioner Union had then resisted the Writ Petition by contending that the respondents were only part time employees and had worked only till 1986 and not till 1989 as claimed by them. The respondents had in the Writ Petition sought only



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reinstatement and not permanency. In fact in another W.P.No.16392 of 1992, this Court had ordered for reinstatement of about 165 such employees who got displaced from the temporary employment due to the new system of milk distribution. They were only reinstated in the same position. It was observed by the Labour Court that there was no mention of the High Court order in the letters issued by the petitioner Union. But the first letter dated 24.10.2014 itself clearly mentions the High Court order in W.P. No.2304/1996. This contention of the Labour Court is wrong.

7.3. It was purely the decision of the respondents not to rejoin the petitioner Milk Union especially when this Court had ordered reinstatement and the petitioner Union had also asked them to join. This cavalier attitude of the respondents have put them in this unenviable position. 'No work No pay' is a universal rule. It is true that the litigation consumed a lot of time. It is also true that they had a valid case for reinstatement. But it appears they were adamant in getting reinstated only as a regular employee which was not as per the orders in W.P.No.2304/1996. Even in the Labour Court, Hosur, they had not sought regularisation. In the Contempt Petition the endorsement made



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by the counsel for the respondents was clear in stating that they will take recourse to separate legal remedy for any substantive rights of regular employment. But, in the C.P. No.28/2019, the prayer was for computing monetary value of benefits due to them presuming that they were entitled for regularisation.

7.4. Thus it is clear that with no legal orders on regular employment and armed only with an order of reinstatement, the respondents ought to have joined the petitioner Union instead of litigating in various forums. On the contrary, claiming huge arrears by making a hypothetical situation of comparison with a regular employee (even if he is a junior) defies logic. There is no use in crying over spilt milk. I do not find any merit in the Labour Court's Award.

8. In the result, the Writ Petition is allowed and the impugned Award dated 13.07.2022 made in Claim Petition in C.P. No.28/2019 on the file of the Labour court, Hosur, is set aside. No costs. Consequently connected Writ Miscellaneous Petition is closed.



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Speaking /Non speaking Order



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R.HEMALATHA, J.

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