



C.M.S.A.No.31 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.10.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

C.M.S.A.No.31 of 2021

and

C.M.P.No.2664 of 2021

R.Krishnamoorthy

... Appellant

Vs.

The Management of Sangapur
Consumer Co-operative Stores Ltd.,
Rep. by its Special Officer,
CC.2220, Ganesh Building, Cross Cut,
Gandhipuram, Coimbatore – 641 012.

... Respondent

Prayer : Civil Miscellaneous Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 08th February 2013 passed in C.M.A.No.02 of 2012 on the file of the Principal District Judge at Coimbatore reversing the order dated 26.05.2011 passed in Sa.Pa.Sa.05 of 2009 by the Controlling Authority under the Payment of Wages Act, 1936.

For Appellant : Mr.S.Sivakumar

For Respondent : No appearance



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JUDGEMENT

Assailing the judgment and decree passed dated 08.02.2013 passed in C.M.A.No.25 of 2012 on the file of the Principal District Judge at Coimbatore reversing the order dated 26.05.2011 passed in Sa.Pa.Sa.05 of 2009, the present appeal has been filed by the appellant.

2. The brief facts of the case are as follows :-

The appellant was appointed as salesman on 01.09.1980 in a fair price shop run by the respondent and was made permanent with effect from 01.09.1981 and was receiving wages at Rs.3,477/-. In the month of October, 2007, his pay was fixed at Rs.5,025/- and payment was made at this rate for the months of October 2007 and November 2007. The benefit of Government Order No.289 dated 28.09.2007 was mistakenly applied to the appellant. However, the error was rectified after two months and excess payment was recovered. Thereafter, he was given salary at the old scale of Rs.3,477/-. Therefore, he filed a petition on 27.02.2009 before the Authority under the Payment of Wages Act/Deputy Commissioner of Labour under Section 15(2) of Payment of



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Wages Act, 1936 in Sa.Pa.Sa.5 of 2009 in respect of the recovery of the amount for the period from October 2007 to January 2009 which works out to Rs.21,700/- (at Rs.1,550/- p.m.). By order dated 26.05.2011, the Deputy Commissioner of Labour held that the pay was fixed by the respondent that there was no misrepresentation on the part of the appellant and that therefore the respondent is liable to pay the difference amount which works out to Rs.24,268/- (at Rs.1,548 from October 2007 to January 2009). Aggrieved by the said order, the respondent has preferred an appeal in C.M.A.No.25 of 2012 before the appellant authority/Principal District Judge at Coimbatore. By order dated 08.02.2013, the appellate authority allowed the appeal on the wrong premise as if the appellant was not appointed in the manner known to law and contrary to the decision in the case of *A.Umarani Vs. Registrar, Co-operative Societies and Ors.* reported in *2004 (4) L.L.N. 8*, by reversing the order of the controlling authority, dated 26.05.2011. Challenging the same, the appellant has preferred the present appeal.



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3. The learned counsel appearing for the appellant submitted that though the appellant is not entitled for salary as per G.O.No.289 from the month of December 2007 onwards, however, there is no misrepresentation on behalf of the appellant and received the amount from the month of October 2007 and November, 2007, which was recovered without issuing any notice to the appellant, which is wholly unsustainable and the same is covered by the decision of the Apex Court reported in **2015 4 SCC 334**.

4. Though appellate Court disposed of the appeal in the year 2013, however, the appellant has chosen to file the present appeal in the year 2021. Further, though the name of the respondent was printed in cause list, however, none appeared on behalf of the respondent. Considering the pendency of this appeal, this Court is inclined to dispose of the appeal based on the available records.

5. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing for the appellant and perused



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the materials available on record and also the orders passed by the controlling authority and the appellate authority.

6. At the time of admitting the appeal, this Court framed the following substantial question of law for consideration :-

“1. Whether the Appellate Judge was correct in relying upon the judgment of the Supreme Court in 2009 (4) LLN 604 Syed Abdul Qadie case and 2012 (3) LLN 533 in Chandi Prasad Uniyal which clearly stated that the Management cannot recover the excess amount which has been to an employee due to mistake committed by them.

2. Whether the Appellate Judge was correct in stating the the Appellant Workman was not regularised when he has already regularized by the Competent Board of Directors on 01.09.1980 and when the same has not been disputed by the respondent Management.”

7. Admittedly, the scale of pay for the appellant was fixed in terms of G.O.No.289 dated 28.09.2007 at Rs.5,255/-. However, as per Ex.R.5, he is entitled to only a sum of Rs.3,477/-, thereby the respondent



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recovered the amount for the month of October, 2007 and November, 2007, which is wholly unsustainable and the said recovery is without issuing any notice to the appellant as the said fixation was not made at the instance of the appellant on the basis of any misrepresentation. Hence, applying the ratio laid down by the Apex Court reported in **2015 4 SCC 334**, the recovery to the tune of Rs.3,100/- is not sustainable. Hence, the respondent is directed to pay a sum of Rs.3,100/- within a period of four (4) weeks from the date of receipt of a copy of this judgment. Further, liberty is granted to the appellant to workout the remedy in the manner known to law in respect of the fixation of pay for the subsequent period.

8. With the above directions, the civil miscellaneous second appeal is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

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Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
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WEB COPY To

- 1.The Principal District Judge at Coimbatore.
- 2.The Deputy Commissioner of Labour, Coimbatore.



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M.DHANDAPANI, J.,

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